

UTRECHT & PHILLIPS, PLLC

ATTORNEYS AT LAW

1133 Connecticut Avenue, N.W. FEB -4 P 1:50

Suite 300

Washington, D.C. 20036

(202) 778-4007

Facsimile (202) 293-4729

February 4, 2009

Thomasenia P. Duncan  
General Counsel  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW, 6<sup>th</sup> Floor  
Washington, DC 20463

**Re: MUR 6148, Hillary Clinton for President and Shelly Moskwa, as Treasurer**

Dear Ms. Duncan:

This is the response of our clients, Hillary Clinton for President and Shelly Moskwa, as Treasurer (collectively, the "Committee" or "Respondents") to the complaint filed in Matter Under Review ("MUR") 6148. In short, this complaint suffers from a dearth of any information to which the Committee could reasonably respond and wholly fails to recite any facts that would constitute a violation of the law.

To the extent any allegation can be discerned from the filing, it seems that complainant's sole complaint is that the Committee should not have engaged in fundraising to retire debts remaining from the 2008 presidential primary election, while, at the same time, the Committee's candidate, Senator Hillary Clinton, campaigned for the eventual nominee, President Barack Obama. Clearly, this complaint is nonsensical on its face and consists more of a fundamental misunderstanding of the political process than a recitation of facts or law describing any potential violations by Respondents.

**1. The Complaint Should Be Dismissed Because It Does Not Meet The Minimum Requirements For A Complaint Under The FEC Regulations**

Under the Act and Commission regulations, a complaint, to be sufficient, valid and appropriate for filing and consideration by the Commission, must conform to certain provisions set forth at 11 C.F.R. 111.4(d). Included in those minimum provisions are the following requirements:

(3) The complaint should contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction; and

(4) The complaint should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

29044250307

Quite simply, even a cursory reading of the complaint reveals that it does not meet the very low threshold set forth in the Commission's regulations for supporting a valid complaint. Merely swearing to speculative and unsubstantiated words not supported by facts or personal knowledge should not give rise to Commission consideration of a matter under review.

The Complaint simply makes an erroneous legal assumption without merit, based wholly on irrelevant information, and without doing even the most basic review of the applicable legal standards, in order to allege that the Committee engaged in prohibited activity. The Commission should see this complaint for the nuisance that it is, and dismiss it forthwith.

**2. Taken At Face Value. There Is No Merit to Complainant's Nonsensical Complaint.**

Moreover, it is a well-documented fact, as established by the Committee's own FEC reports, that the Committee has had a substantial debt remaining from the 2008 presidential primary election. Not unexpectedly, the Committee has engaged in numerous debt retirement activities, including, as recognized by the complainant, direct mail appeals, an ongoing website contribution page, and other permissible fundraising activities.

Complainant provides as documentation what purports to be a copy of a direct mail fundraising appeal and a screenshot of the Committee's website contribution page. How this substantiates any violation is unclear, and appears to be wholly irrelevant. No provision of law prohibits the Committee from raising funds, subject to the Act's limitations and prohibitions, to retire its own debt, while at the same time, the Committee's candidate is campaigning for other candidates.<sup>1</sup> No provision of law is cited by complainant.

Complainant also provides a purported screenshot of the National Organization for Women Political Action Committee ("NOW PAC"). While the Committee has not verified the accuracy of the attachment, the Committee's own FEC reports reveal that permissible earmarked contributions were received and duly reported by the Committee in accordance with applicable provisions of law, and there is simply no information to indicate otherwise.<sup>2</sup>

In sum, the Complaint is based on pure speculation and the documents attached to it do not support a single violation of the Act. For this reason, the Commission should dismiss it immediately. Accordingly, Respondents respectfully request that the Commission find no reason to believe that any violation of the Federal Election Campaign Act of 1971 (the "Act"), as amended, or the Commission regulations has occurred and close this MUR as expeditiously as possible.

Respectfully submitted,

  
Lyn Utrecht

  
Eric Kleinfeld

<sup>1</sup> All such campaign activities were conducted in accordance with applicable laws, and there is no suggestion made to the contrary.

<sup>2</sup> Nearly 100 itemized contributions were reported on eight separate reports.